IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 8063 of 1999
with
CIVIL APPLICATION NO. 1388 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD MUNICIPAL TRANSORT SERVICE

Versus

HANSABEN NATWARLAL DABGAR

Appearance:
MR HS MUNSHAW for Petitioner
MR SANDIP C SHAH for Respondent No. 1
NOTICE UNSERVED for Respondent No. 2
DAKSHESH MEHTA for Respondent No. 3

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE K.M.MEHTA

Date of decision: 28/09/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

In this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as `the Act'), the appellant Ahmedabad Municipal Transport Service (AMTS for short) original opponent No. 3 in M.A.C.P. No. 366 of 1992 has challenged the amount of Rs. 3,50,000/- awarded by the Motor Accident Claims Tribunal (Aux.), Ahmedabad, for personal injuries sustained by respondent No. 1, original claimant, inter alia, contending that the amount of compensation is excessive and the main responsibility was on the part of the driver of the autorickshaw.

2. The original claimant claimed an amount of Rs. 4,03,200/- on account of serious injuries and permanent partial disablement. She is one of the seriously injured claimants on account of road accident which occurred on 15.9.1991. Two vehicles were involved in the accident. One of them was AMTS bus bearing registration No. GQE 8002 belonging to the appellant and the autorickshaw. The contention of the original claimant was that AMTS bus was driven in a rash and negligent manner. The claimant was travelling in autorickshaw bearing No. GRR 312. The accident occurred on 15.9.1991 at about 9.00 p.m. Original opponent No. 1 driver and the owner of the autorickshaw and the driver of the AMTS bus were rash and negligent and responsible for the accident as per the case of the claimant. On account of dashing of the AMTS bus, the autorickshaw turned turtile resulting into serious injuries to the occupants including the original claimant respondent in this appeal.

3. The opponents appeared and resisted the claim petition. Each party tried to throw the blame on the adversary. However, considering the facts and circumstances of the case, the Tribunal has awarded an amount of Rs. 3,50,000/- against the original claim of Rs. 4,03,200/- to the claimant for personal injuries holding that both the drivers of the vehicles were rash and negligent and responsible for the accident resulting into serious permanent partial disablement affecting functional loss to the claimants.

4. Two claim petitions were filed and both were jointly, decided after taking evidence and consolidating them by a common judgement dated 27.9.1999 and the judgement and award rendered in MACP No. 367 of 1992 has not been challenged by the appellant. In other words, it has been acquiesced that the claimant has, clearly,

testified that the driver of the A.M.T.S. bus was, mainly, responsible for the happening of the accident. The driver of the AMTS bus has not been examined and, therefore, adverse inference has been drawn for non-examination of the bus driver.

5. In so far as the amount of compensation is concerned that it is exorbitant is without any merits in light of the facts and circumstances emerging from the record of the present case. The original claimant had sustained serious injuries on account of which she has sustained permanent partial disablement to the extent of 38% rendering her disabled to cook and which for house wife is not only a great agony or strain but a serious astonishment. The amount of compensation is required to be examined and evaluated in the lights of the two heads, pecuniary and non-pecuniary loss. The claimant is examined on examination as she was undergoing treatment and was unable to attend the Tribunal. She was doing miscellaneous labour work and cooking work, out of which she was earning Rs. 600/- per month. Over and above she was getting food free of cost, transport charges and clothing expenses were reimbursed by the master where she was serving. Therefore, she claimed an amount of Rs. 1000/- to Rs. 1200/- per month capitalising perks enjoyed by her as cook. She was undergoing treatment for long. She was examined and treated by orthopaedic Dr. Aditya Upadhyaya who has issued disablement certificate. Medical bills and receipts are also produced and after having considered the entire set of evidence presented before us during the course of hearing of this appeal, we find that the amount of compensation cannot be characterised as excessive or exorbitant. Her evidence is, fully, supported by the medical evidence. Medical certificate dated 3.9.1998 issued by orthopaedic surgeon Dr. Aditya Upadhayaya is very clear that she was treated as indoor patient in his hospital for 10 days. She was also undergoing physiotherapy treatment. She has sustained shortening of right lower limb. The fracture was malunited in view of the medical certificate and record of Shardaben General Hospital. It is, clearly, certified by Dr. Aditya Upadhyaya that there is a disability and immobility and the stability and weighting power capacity of the right knee including the movement is restricted. There is restriction of knee joint movement, weakness over right limb. There is a functional loss of 15% in the movement. Overall permanent partial disablement of the right leg is assessed at 38%.

6. The Tribunal has taken Rs. 1500/- as income of

the injured considering the income at the time of accident and future income. She is now unable to work. Medical evidence has also supported the conclusion recorded by the Tribunal and therefore the Tribunal has awarded Rs. 2,88,000/- (Rs. 1500 x 12x 16) under the head of future economic loss. The Tribunal has awarded Rs. 50,000/- under the head of pain, shock and suffering. The other expenses are also, awarded. Therefore, the consolidated amount of Rs. 3,50,000/awarded by the Tribunal to the original claimant-respondent herein for personal injuries and permanent partial disablement on account of the accident could not be said to be excessive and exorbitant. The appeal, therefore, merits dismissal and accordingly, it is dismissed at the admission stage. There shall be no order as to costs.

In view of the order passed in the main matter, no orders are passed on the Civil Application.

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